

Message Text

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C O N F I D E N T I A L STATE 218656

E.O. 11652: GDS

TAGS: ASEC, PDIP, UR, US, CGEN

SUBJECT: TRIAL OF CHERNYAYEV AND ENGER

1) ON FRIDAY, AUGUST 25, JUDGE LACEY, OF THE FEDERAL DISTRICT COURT IN NEWARK, REVERSED HIS EARLIER DECISIONS WHICH HAD BEEN FAVORABLE TO THE DEFENSE. THOSE DECISIONS HAD SUPPRESSED CERTAIN EVIDENCE SEIZED FROM ZINYAKIN AND CHERNYAYEV AND ENGER AT THE TIME OF THEIR ARREST, INCLUDING THE ORANGE JUICE CAN WITH THE FILM OF THE CLASSIFIED DOCUMENT WHICH HAD BEEN TAKEN FROM ZINYAKIN. THE RESULT OF HIS DECISIONS WOULD HAVE MEANT THAT THE GOVERNMENT COULD NOT INTRODUCE THAT EVIDENCE AT THE TRIAL.

2) THE DEFENSE HAD MOVED TO SUPPRESS THIS EVIDENCE ON THE
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GROUND THAT THE SEARCHES WERE ILLEGAL, IN PART BECAUSE OF DIPLOMATIC IMMUNITY ALLEGEDLY ENJOYED BY THE DEFENDANTS, AS WELL AS ZINYAKIN. EARLIER THE JUDGE HAD GRANTED THESE DEFENSE MOTIONS, BUT THE GOVERNMENT REARGUED THE MATTER AND ON FRIDAY THE JUDGE REVERSED HIMSELF.

3) EVEN WITHOUT THE EVIDENCE IN QUESTION, THE GOVERNMENT COULD

HAVE CONTINUED ITS PROSECUTION, BUT THE CASE AGAINST THE DEFENDANTS IS ENHANCED BY THIS EVIDENCE.

4) IN A RELATED DEVELOPMENT, THE DEFENSE COUNSEL, FROM THE FIRM OF WOLF & POPPER OF NEW YORK, TOLD THE JUDGE ON FRIDAY THAT THEY COULD NOT CONTINUE TO REPRESENT BOTH DEFENDANTS BECAUSE A CONFLICT HAD DEVELOPED BETWEEN DEFENDANTS, I.E., CHERNYAYEV INTENDS TO PURSUE HIS OWN LINE OF DEFENSE WHICH MAY BE DIFFERENT FROM THE DEFENSE OF, AND POINT THE FINGER AT, ENGER. THEREFORE, CHERNYAYEV WAS GOING TO RETAIN HIS OWN LAWYER, WHO WOULD NOT BE A MEMBER OF THEIR FIRM. JUDGE LACEY TOLD CHERNYAYEV TO REPORT BACK TO THE COURT ON TUESDAY, AUGUST 29, WITH HIS NEW LAWYER WHO SHOULD BE PREPARED TO GO TO TRIAL ON SEPTEMBER 12, AS SCHEDULED.

5) THERE IS ONLY ONE REMAINING PRETRIAL MATTER TO DISPOSE OF. THAT CONCERNS A DEFENSE MOTION TO FORCE DISCLOSURE FROM THE GOVERNMENT OF ANY INSTANCES IN WHICH THE DEFENDANTS WERE OVERHEARD AS A RESULT OF ELECTRONIC SURVEILLANCE. THIS MATTER IS A COMPLICATED AND DELICATE LEGAL QUESTION THAT HAS GONE THROUGH SEVERAL COMPLEX PROCEDURAL STEPS. HOWEVER, THE U.S. ATTORNEYS HANDLING THE CASE ARE OPTIMISTIC THAT THE JUDGE WILL RULE IN THE NEXT FEW DAYS THAT THE GOVERNMENT DOES NOT HAVE TO TURN OVER ANY SUCH OVER-HEARINGS BECAUSE THEY ARE IRRELEVANT. CONFIDENTIAL

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THE GOVERNMENT DOES NOT INTEND TO USE ANY EVIDENCE ACQUIRED BY ELECTRONIC SURVEILLANCE IN THE TRIAL.

6) COMMENT: THE JUDGE'S DECISION ON FRIDAY MEANS THAT THE DEFENSE HAS NOT WON ANY SIGNIFICANT PRETRIAL MOTIONS. WE ASSUME THAT WOLF & POPPER ARE KEEPING THEIR SOVIET GOVERNMENT CLIENTS WELL INFORMED AND MUST HAVE ADVISED THEM THAT A CONVICTION IS NOW FAIRLY CERTAIN. LAST WEEK, THEY MIGHT HAVE TOLD THEIR CLIENTS THAT, BECAUSE OF EVIDENTIARY RULINGS, THEY HAD A CHANCE FOR THE CASE TO BE DISMISSED BEFORE TRIAL. THEY NOW CAN HAVE NO SUCH HOPE. DEPARTMENT (L) IS IN FREQUENT TOUCH WITH U.S. ATTORNEYS IN NEWARK, AND WILL SEEK TO FIND OUT REASON FOR, AND SIGNIFICANCE OF, CHERNYAYEV'S MOVE FOR A SEPARATE DEFENSE. CHRISTOPHER

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